

REMARKS

Applicants respectfully request entry of the amendments and remarks submitted herein. Claims 1 and 5 have been amended herein for clarification purposes and new claims 18-26 have been added. Support for new claims 18-26 can be found in the originally filed claims and throughout the specification, specifically at paragraph [0015] and in Examples 2 and 3. Non-elected claims 14-17 have been canceled herein without prejudice to continued prosecution.

Claims 1-13 and 18-26 are currently pending. Reconsideration of the pending application is respectfully requested.

The 35 U.S.C. §103 Rejections

Claims 1-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bermudez et al. (U.S. Patent No. 4,384,010) or Freeman et al. (U.S. Patent No. 3,615,655). According to the Examiner, Bermudez et al. teaches a process for grinding cereal grains, and Freeman et al. teaches steps of rupturing the cells of a cereal grain. Applicants respectfully traverse these rejections with respect to the pending claims.

Applicants' claims are directed toward abrading, which is different from the grinding disclosed by Bermudez et al. and Freeman et al. As defined in Merriam-Webster online dictionary (www.merriam-webster.com), abrading is defined as "to scrape off or wear away," while grinding is defined as "to reduce to powder or small fragments by friction." This is supported by the present specification, which discloses that the invention relates to 'the recovery of an oil containing germ product' (see page 2, line 14) that can be 'further processed for oil recovery' (see page 4, line 26). On the other hand, Bermudez et al. discloses methods of grinding cereal grains reduce the average particle size of the cereal grains, and Freeman et al. discloses grinding the ruptured germ cell in a liquid slurry to release the protein rich fraction. In view of the distinction between grinding and abrading, claim 1 is not anticipated by Bermudez et al. or Freeman et al.

In addition, to clarify that the claimed methods are for recovering substantially *intact* germ, claim 1 has been amended to indicate that the "abrading results in germ that is of a size

that can be retained on a 1.68 mm opening sieve (U.S. Standard Size Number 12 Wire Mesh Sieve)." Support for this language can be found, for example, in paragraph [0042].

Pending claim 1 is directed toward methods that are clearly distinct from the methods of Bermudez et al. or Freeman et al. In view of the amendments and remarks herein, Applicants respectfully request that the rejection of the claims under 35 U.S.C. §103(a) be withdrawn.

Claims 12 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bermudez and Freeman in view of Starch (in Kirk Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, 1997). As discussed above, both Bermudez et al. and Freeman et al. disclose grinding, and neither discloses abrading the cereal grain so as to produce intact germ. The Starch article does not cure this deficiency of disclosure in Bermudez et al. or Freeman et al. In view of the amendments and remarks herein, Applicants respectfully request that the rejection of the pending claims under 35 USC 103(a) be withdrawn.

The Double Patenting Rejection

Claims 1, 8, 9 and 11 stand provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 13 of co-pending U.S. Application No. 10/521,050. Applicants respectfully request that the nonstatutory obviousness-type double patenting rejection be held in abeyance until allowable subject matter has been identified. After allowable subject matter has been identified, Applicants will submit an appropriate Terminal Disclaimer.

CONCLUSION

Applicants respectfully request that claims 1-13 and 18-26 be allowed. Please apply any charges or credits to Deposit Account No. 06-1050.

Applicant : Suhas K. Mehra et al.
Serial No. : 10/521,129
Filed : January 12, 2005
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Attorney's Docket No.: 18780-021US1

/April 3, 2008/

Date: _____

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